

NO FEE

REEL 3466 PAGE 901

RECORDING REQUESTED BY:

WHEN RECORDED, RETURN TO:

01484

State Department of Toxic Substances Control  
700 Heinz Avenue, Ste. 200  
Berkeley, CA 94710  
Attn: Barbara J. Cook

NO FEE FOR RECORDATION PURSUANT  
TO GOVERNMENT CODE SECTION 27383

Recorded at the Request of  
FIDELITY NATIONAL TITLE

JAN 9 1997

8:00 A.M.  
MONTEREY COUNTY RECORDER

FILED 7-156423

**COVENANT TO RESTRICT USE OF PROPERTY  
EMBASSY SUITES PROJECT**

This Covenant and Agreement ("Covenant") is made on the 12<sup>th</sup> day of December, 1996, by the REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE ("Covenantor"), who is the owner of record of certain property located in the City of Seaside, County of Monterey, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property"), and by the STATE DEPARTMENT OF TOXIC SUBSTANCES CONTROL ("Department"), with reference to the following facts:

A. There has been constructed an Embassy Suites Hotel (the "Hotel") on the Property, the street address of which is 1441 Canyon Del Rey, Seaside, California 93955. The surface of the Property has 221,900 total square feet (59,400 square feet hotel foundation and 162,500 square feet parking lot).

B. Hazardous substances and wastes were identified in soils at the Property, including, but not limited to lead and other metals, and total petroleum hydrocarbons (TPH-waste oils). The concentrations of these chemicals detected on the Property as of July 1990 are described in Exhibit "B," attached hereto and incorporated herein by this reference.

C. The hazardous substances and wastes found on the Property are contained by the placement of a cap consisting of fill, building foundation and asphalt pavement covering

the entire Property. Risks to human health and environmental health do not exist as the Property has been developed.

D. The Department has determined that deed restrictions need to be imposed on the Property to ensure full protection of public health and the environment.

E. The Property, excluding the improvements thereon, is presently owned by the Covenantor. The Hotel is presently owned by John Q. Hammons Hotels Two, L.P. ("JQH"), lessee of the entire Property under a ground lease with the Covenantor as lessor.

F. Covenantor and JQH agree that in order to protect the present and future public health and safety and the environment, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from any hazardous substance remaining on the Property.

## ARTICLE 1

### GENERAL PROVISIONS

1.1 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Section 25355.5 of the California Health and Safety Code and run with the land pursuant to said Section 25355.5. Each and all of the Restrictions are enforceable by the Department.

1.2 Concurrence of Owners Presumed. All purchasers and lessees of any portion of the Property shall be deemed by their purchase or lease of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future owners and occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.3 Incorporation Into Deeds and Leases. Covenantor and JOH agree that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases (as defined herein) of any portion of the Property.

## ARTICLE 2

### DEFINITIONS

2.1 Cap. "Cap" shall mean the protective cover used to isolate contaminated soils on the Property from human or environmental exposure. The Cap consists of fill, building foundation and asphalt pavement covering the entire Property.

2.2 Department. "Department" shall mean the State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.3 Improvements. "Improvements" shall mean all buildings, structures, fixtures, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.

2.4 Leases. "Leases," "subleases," or "rental agreements," shall refer only to occupancy agreements for terms of more than thirty (30) days, and shall not include

transient occupancy agreements with hotel guests, convention attendees, or similar agreements (hereinafter "hotel guest agreements").

2.5 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property, including but not limited to JQH.

2.6 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns who hold title to all or any portion of the Property.

2.7 Property. The "Property" is located at 1441 Canyon Del Rey in Seaside, California, and is more fully described in Exhibit "A."

### ARTICLE 3

#### RESTRICTIONS

3.1 Restrictions on Use. Owner and JQH agree to restrict the use of the Property as follows:

3.1.1 The Property shall not be used in such a way that will disturb or interfere with the integrity of the Cap. Subject to the requirements of Article 3.1.2 and 3.1.3 below, however, repairs, restoration, rehabilitation, or similar work at the Hotel which may affect the Cap may be performed with the Department's prior written approval.

3.1.2 Modifications. Subject to the provisions of Article 3.1.3 below, Owner and/or JQH shall give the Department at least sixty (60) days' advance written notice prior to the intended date of any proposed modifications, discontinuation or other disruption of the Cap. The written notice shall be sent by certified mail to the Department at the address set out in Article 5.2 of this Covenant. The written notice to the Department shall include

a detailed description of the work to be done or modifications to be made and a map showing the exact location of the proposed work and the reasons for modification, disruption or discontinuation.

**3.1.3 Emergency Response Action/Notification.** In the event of any action or occurrence (such as a fire, earthquake, explosion, or human exposure to hazardous substances caused by the release or threatened release of a hazardous substance) during the course of this Covenant, Owner and/or JQH shall immediately take all appropriate action to prevent, abate, or minimize such emergency, release, or immediate threat of release and shall immediately notify the Department. Owner and/or JQH shall take such action in consultation with the Department and in accordance with all applicable provisions of this Covenant. Within seven (7) days of the onset of such an event, Owner and/or JQH shall furnish a report to the Department setting forth the events which occurred and the measures taken in the response thereto. In the event that Owner and/or JQH fail to take appropriate response and the Department takes the action instead, Owner and/or JQH shall be liable to the Department for all costs of the response action.

**3.1.4 Department Review and Approval.**

(a) If the Department determines that any report, plan, schedule or other document submitted to the Department for approval pursuant to this Covenant fails to comply with this Covenant or fails to protect public health or safety or the environment, the Department may: (1) modify the document as deemed necessary and approve the document as modified; or (2) return comments to Owner and/or JQH with recommended changes and a date by which Owner and/or JQH must submit to the Department a revised document incorporating the recommended changes.

(b) Any noncompliance with these modifications or directives shall be deemed a failure or refusal to comply with this Covenant.

**3.1.5 Stop Work Order.** In the event that the Department determines that any activity (whether or not pursued in compliance with this Covenant) may pose an imminent or substantial endangerment to the health or safety of people on the Property or in the surrounding area or to the environment, the Department may order Owner and/or JQH to stop further implementation of this Covenant for such period of time needed to abate the endangerment. In the event that the Department determines that any activities (whether or not pursued in compliance with this Covenant) are proceeding without Department authorization, the Department may order Owner and/or JQH to stop further implementation of this Covenant or activities for such period of time needed to obtain Department authorization, if such authorization is appropriate. Any deadline in this Covenant directly affected by a Stop Work Order, under this section, shall be extended for the term of the Stop Work Order.

**3.1.6 Department Required Modifications.** The Department may require modification, replacement, or additions to remediation facilities if those facilities are not achieving remediation objectives or protecting public health, safety or the environment. The Department may require additional evaluations, designs and the construction and operation of facilities to achieve these objectives.

**3.1.7 Compliance With Applicable Laws.** Owner and JQH shall carry out this Covenant in compliance with all applicable local, state and federal requirements, including, but not limited to, requirements to obtain permits and to assure worker safety.

**3.1.8 Site Access.** Access to the Property shall be provided at all reasonable times to employees, contractors and consultants of the Department. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that the Department or any other agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and

move freely at the Property at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytical data, and contracts relating to the Property; reviewing compliance with the terms of this Covenant; and conducting such tests as the Department may deem necessary.

**3.2 Conveyance of Property.** Owner and/or JQH shall provide a thirty (30) day advance notice to the Department of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person, excluding any hotel guest agreements and deeds of trust or other security agreements related solely to financing ("Excluded Transactions"). The Department shall not have the authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided in this Covenant or by operation of law.

**3.3 Enforcement.** In the event of any breach or alleged breach of this Covenant by Owner and/or JQH, the Department will give written notice thereof to Owner and/or JQH. Owner and/or JQH shall have thirty (30) days after receipt of such notice to cure the breach, or if the breach is not reasonably capable of being cured within said thirty (30) days, to commence the cure and diligently prosecute the same to completion. Failure to comply with any of the requirements of this Covenant shall, after notice and opportunity to cure as required hereinabove, be grounds for the Department to take enforcement action, including the filing of an administrative, civil, or criminal action, as provided by law, against the Owner and/or JQH. If the Department finds that the violation presents a present or future risk to human health and safety, the Department may require that the Owner and/or JQH modify or remove any Improvement constructed in violation of this Covenant to the extent necessary to ensure protection of human health and safety.

**3.4 Notice in Agreements.** Owner and JQH shall execute a written instrument which shall accompany all purchase, lease, sublease and other conveyance documents (other

than documents for Excluded Transactions) relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land, the property, and the owner, lessee, or other occupant of the land or property subject to the requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists."

3.5 No Further Action. The Department is now the responsible agency for the State of California regarding this matter, having succeeded the Department of Health Services ("DHS") as such. By letter dated September 12, 1990, DHS recommended no further action on the Property provided that Covenantor implement a worker's health and safety plan during construction and record a deed of notation as described therein. Since the conditions of said letter have been satisfied, and so long as Owner and/or JQH comply with this Covenant, including but not limited to maintenance of the Cap, Department acknowledges and agrees that no further action on the Property is required.

#### ARTICLE 4

##### VARIANCE AND REMOVAL OF RESTRICTIONS

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property, or any portion thereof, may apply to the Department for a written variance from any of the Restrictions or requirements of this Covenant. Such application shall be made in accordance with Section 25233 of the California Health and Safety Code or any applicable provision then in effect.

4.2 Removal of Restrictions. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof, may apply to the Department to remove any of the Restrictions or requirements of this Covenant as they apply to all or any portion of



the Property. Such application shall be made in accordance with Section 25234 of the California Health and Safety Code or any applicable provisions then in effect.

4.3 Terms. Unless modified or removed in accordance with Section 4.1 or 4.2 above, the Restrictions and requirements of this Covenant shall continue in effect in perpetuity. In the event the entire interest of Covenantor or of any Owner in the Property, including but not limited to JQH, has been fully sold, conveyed or transferred, in accordance with this Covenant, then such transferor will cease to have any further obligations hereunder.

## ARTICLE 5

### MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, such notice, demand, or other communication shall be in writing and shall be sent simultaneously to an authorized representative of the Covenantor at 1600 La Salle Avenue, Seaside, California 93955, Attn: Executive Director, and to the Owner, to the Department at 700 Heinz Avenue, Suite 200, Berkeley, CA 94710, Attn: Barbara J. Cook, P.E., Chief, Northern California Coastal Cleanup Operations Branch, in any certified mail, with return receipt requested. Until further written notice from JQH, any notice permitted or required to be given to JQH hereunder shall be sent to: John Q. Hammons Hotels Two, L.P., c/o John Q. Hammons Hotels, Inc., 300 S. Hammons Parkway, Suite 900, Springfield, MO 65806, Attention: President/Chief Financial Officer.

5.3 Partial Invalidity. If any portion of this Covenant is determined to be invalid or unenforceable for any reason, the remaining portion of this Covenant shall remain in full force and effect.

5.4 Government Liabilities. The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Owner or JQH, or related parties specified in paragraph 5.10, Parties Bound, in carrying out activities pursuant to this Covenant, nor shall the State of California be held as a party to any contract entered into by Owner and JQH or its agents in carrying out activities pursuant to this Covenant.

5.5 Additional Actions. Subject to Article 3.5 above, by entering into this Covenant, the Department does not waive the right to take any further actions authorized by law.

5.6 Extension Requests. If Owner or JQH is unable to perform any activity or submit any document within the time required under this Covenant, it or they may, prior to expiration of the time, request an extension of the time in writing. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity or document is due.

5.7 Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify a new schedule in writing.

5.8 Cost Recovery. Owner and JQH shall be liable for all of the Department's future costs incurred in responding to the contamination at the Site. Cost recovery may also be pursued by the Department under CERCLA, Health and Safety Code Section 25360, or any other applicable state or federal statute or common law.

5.9 Time Periods. Unless otherwise specified, time periods begin from the effective date of this Covenant and "days" means calendar days. The effective date of this Covenant is the date the Covenant is signed by the Department.

5.10 Parties Bound. This Covenant applies to and is binding upon Covenantor, Owner, JQH and their successors and assigns, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Covenant.

5.11 Representative Authority. Each undersigned representative of the parties to this Covenant certifies that she or he is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind the parties to this Covenant.

5.12 Recordation. This Covenant shall be executed by the Covenantor, JQH and by the Department, and may be executed in counterparts. This Covenant shall be recorded by the Covenantor in the County of Monterey within ten (10) days of the date of execution as set forth above.

IN WITNESS WHEREOF, the Covenantor, JQH and the Department execute this Covenant as of the date set forth above.

COVENANTOR

REDEVELOPMENT AGENCY OF THE  
CITY OF SEASIDE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

DEPARTMENT

STATE DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

By: \_\_\_\_\_

Barbara J. Cook, P.E.  
Chief, Northern California  
Coastal Cleanup Operations Branch

(signatures continued on next page)

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REDEVELOPMENT AGENCY OF THE  
CITY OF SEASIDE

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DEPARTMENT

STATE DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

By: Barbara J. Cook  
Barbara J. Cook, P.E.  
Chief, Northern California  
Coastal Cleanup Operations Branch

(signatures continued on next page)

JQH

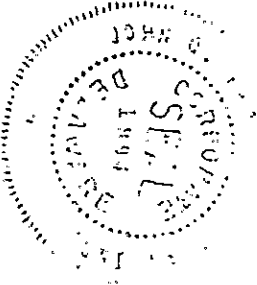
JOHN Q. HAMMONS HOTELS TWO, L.P.,  
a Delaware limited partnership

By: JOHN Q. HAMMONS HOTELS, L.P.,  
a Delaware limited partnership,  
General Partner

By: JOHN Q. HAMMONS HOTELS,  
INC., a corporation, General  
Partner

By: \_\_\_\_\_

Its: \_\_\_\_\_



ACKNOWLEDGMENT

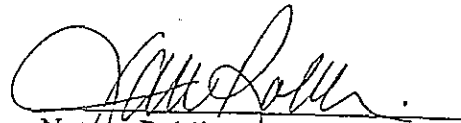
REEL 3466 PAGE 914

STATE OF MISSOURI     )  
                                  )  
COUNTY OF GREENE    )     ss.

On this 12 day of December, 1996, before me personally appeared John Q. Hammons, to me personally known, who being duly sworn, did say that he is the Chairman of the Board and Chief Executive Officer of John Q. Hammons Hotels, Inc., a Missouri corporation (the "General Partner"), which is the General Partner of John Q. Hammons Hotels, L.P., a Missouri limited partnership which is the General Partner of John Q. Hammons Hotels Two, L.P. (the "Partnership"), that the seal affixed to the foregoing instrument is the corporate seal of the General Partner, that said instrument was signed and sealed on behalf of the Partnership by authority of the Board of Directors of the General Partner, and that said John Q. Hammons acknowledged said instrument to be the free act and deed of the Partnership.

IN TESTIMONY WHEREOF, I have hereunto set my name, and affixed my official seal, at my office in Springfield, Missouri, the day and year first above written.

Jan Robbins  
Notary Public-Notary Seal  
State of Missouri  
Greene County  
My Commission Exp. 10/26/2000

  
Notary Public

My commission expires:

OCT. 26, 2000

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

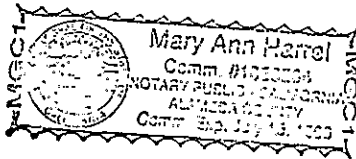
STATE OF CALIFORNIA

County of Sacramento <sup>San</sup> *Alameda*

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On 12-15-96 before me, the undersigned Notary Public, personally appeared  
BARBARA J. LOOK

☐ personally known to me -OR- ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Mary Ann Harrel  
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY(IES) CLAIMED BY SIGNER(S)

- ☐ Individual  
☐ Corporate Officer  
Title(s): \_\_\_\_\_  
☐ Partner ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name of person(s) or entity(ies)  
\_\_\_\_\_  
\_\_\_\_\_

DESCRIPTION OF DOCUMENT

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other than Named Above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

REEL 3466 PAGE 916

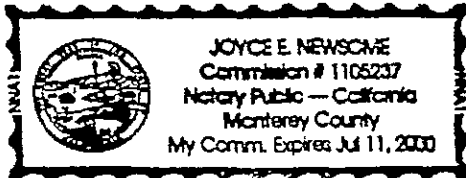
County of Monterey

On 12/12/96 before me, the undersigned Notary Public, personally appeared

Timothy O. Brown

☒ personally known to me -OR-

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Joyce E. Newsome  
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY(IES) CLAIMED BY SIGNER(S)

- ☐ Individual  
☐ Corporate Officer  
Title(s): \_\_\_\_\_  
☐ Partner ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name of person(s) or entity(ies)

Redevelopment Agency of The City  
of Seaside

DESCRIPTION OF DOCUMENT

Covenant to Restrict use of  
Property Embassy Suites Project  
Title or Type of Document

17  
Number of Pages

12/12/96  
Date of Document

None  
Signer(s) Other than Named Above



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Real property situated in the City of Seaside, County of Monterey, State of California, described as follows:

**Parcel I:**

Parcel A, as said parcel is shown on the Map of "Tract No. 1112 Canyon Del Rey (State Highway 218) Realignment and Monumentation of New Right of Way and property corners at the intersection of Del Monte Boulevard" filed for record September 8, 1989, in the Office of the County Recorder of the County of Monterey, State of California, in Volume 16 of Maps, "Cities and Towns" at Page 84.

Excepting therefrom that portion deed to City of Seaside, a municipal corporation recorded May 5, 1993 in Reel 2939, Page 898 of Official Records.

**Parcel II:**

Being a portion of the Del Monte Boulevard Right-of-Way, as shown on the Official Map of Canyon Del Rey (State Highway 218) Realignment and Monumentation of New Right of Way and property corners at the intersection of Del Monte Boulevard, filed for record September 8, 1989, in the Office of the County Recorder of the County of Monterey, State of California, in Volume 16 of Maps, "Cities and Towns", at Page 84, records of Monterey County, in the Rancho Noche Buena, City of Seaside, County of Monterey, State of California; and being more particularly described as follows:

Beginning at a point on the Southeasterly right-of-way line of Del Monte Avenue, said Point of Beginning also being the Northwesterly corner of "Parcel A" and which corner is denoted as a found one-inch iron pipe, all as shown on said Official Map; thence from said Point of Beginning

- (1) North  $36^{\circ}25'00''$  West, 6.48 feet; thence
- (2) North  $53^{\circ}33'20''$  East, 62.43 feet; thence tangentially,
- (3) Along a curve to the right, concave Southeasterly, having a radius of 850.00 feet, through a central angle of  $5^{\circ}30'24''$ , a distance of 81.70 feet; thence non-tangentially,
- (4) South  $36^{\circ}25'00''$  East, 2.56 feet; thence
- (5) South  $53^{\circ}33'20''$  West, 144.00 feet to the Point of Beginning.

**Parcel III:**

Being a portion of the Del Monte Boulevard Right-of-Way, as shown on the Official Map of Canyon Del Rey (State Highway 218) Realignment and Monumentation of New Right of Way and property corners at the intersection of Del Monte Boulevard, filed for record September 8, 1989, in the Office of the County Recorder of the County of Monterey, State of California, in Volume 16 of

EXHIBIT A

Maps, "Cities and Towns" at Page 84, Records of Monterey County, in the Rancho Noche Buena, City of Seaside, County of Monterey, State of California; and being more particularly described as follows:

Commencing at a point on the Southeastly right-of-way line of Del Monte Avenue, said Point of Beginning also being the Northwestly corner of "Parcel A" and which corner is denoted as found one-inch pipe, all as shown on said Official Map; thence North  $35^{\circ}25'00''$  West, 6.48 feet; thence North  $53^{\circ}33'20''$  East, 62.43 feet; thence tangentially, along a curve to the right, concave Southeastly, having a radius of 850.00 feet, through a central angle of  $13^{\circ}26'53''$  a distance of 199.51 feet to the True Point of Beginning for this description; thence from said True Point of Beginning

- (1) Along a curve to the right, concave Southeastly, having a radius of 850.00 feet, through a central angle of  $5^{\circ}00'50''$ , a distance of 74.38 feet (long chord bears North  $69^{\circ}30'38''$  East, 74.36 feet); thence non-tangentially,
- (2) South  $21^{\circ}52'30''$  East, 4.46 feet; thence
- (3) South  $68^{\circ}07'30''$  West, 70.96 feet; thence
- (4) North  $50^{\circ}13'16''$  West, 7.11 feet to the True Point of Beginning.

ILLEGIBLE DOCUMENT DECLARATION  
(UNDER GOVERNMENT CODE 27367.1)

I CERTIFY UNDER PENALTY OF PERJURY THAT THE DOCUMENT TO WHICH THIS  
STATEMENT IS ATTACHED READS AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART OF

  
FOR: FIDELITY NATIONAL TITLE

EXHIBIT "ONE"

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PARCEL I:

PARCEL A, AS SAID PARCEL IS SHOWN ON THE MAP OF "TRACT NO. 1112 CANYON DEL REY (STATE HIGHWAY 218) REALIGNMENT AND MONUMENTATION OF NEW RIGHT OF WAY AND PROPERTY CORNERS AT THE INTERSECTION OF DEL MONTE BOULEVARD", FILED FOR RECORD SEPTEMBER 8, 1989, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, IN VOLUME 16 OF MAPS, "CITIES AND TOWNS", AT PAGE 84.

EXCEPTING THEREFROM THAT PORTION DEEDED TO CITY OF SEASIDE, A MUNICIPAL CORPORATION, RECORDED MAY 5, 1993 IN REEL 2939, PAGE 898, OFFICIAL RECORDS.

PARCEL II:

BEING A PORTION OF THE DEL MONTE BOULEVARD RIGHT-OF-WAY, AS SHOWN ON THE OFFICIAL MAP OF CANYON DEL REY (STATE HIGHWAY 218) REALIGNMENT AND MONUMENTATION OF NEW RIGHT OF WAY AND PROPERTY CORNERS AT THE INTERSECTION OF DEL MONTE BOULEVARD, FILED FOR RECORD SEPTEMBER 8, 1989, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, IN VOLUME 16 OF MAPS, "CITIES AND TOWNS", AT PAGE 84, RECORDS OF MONTEREY COUNTY, IN THE RANCHO NOCHE BUENA, CITY OF SEASIDE, COUNTY OF MONTEREY, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF DEL MONTE AVENUE, SAID POINT OF BEGINNING ALSO BEING THE NORTHWESTERLY CORNER OF "PARCEL A" AND WHICH CORNER IS DENOTED AS FOUND ONE-INCH IRON PIPE, ALL AS SHOWN ON SAID OFFICIAL MAP; THENCE FROM SAID POINT OF BEGINNING

- (1) N. 36° 26' 00" W., 6.48 FEET; THENCE
- (2) N. 53° 20" E., 62.43 FEET; THENCE TANGENTIALLY,
- (3) ALONG A CURVE TO THE RIGHT, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 850.00 FEET, THROUGH A CENTRAL ANGLE OF 5° 30' 24", A DISTANCE OF 81.70 FEET; THENCE NON-TANGENTIALLY,
- (4) S. 36° 26' 00" E., 2.56 FEET; THENCE
- (5) S. 53° 33' 20" W., 144.00 FEET TO THE POINT OF BEGINNING.

PARCEL III:

BEING A PORTION OF THE DEL MONTE BOULEVARD RIGHT-OF-WAY, AS SHOWN ON THE OFFICIAL MAP OF CANYON DEL REY (STATE HIGHWAY 218) REALIGNMENT AND MONUMENTATION OF NEW RIGHT OF WAY AND PROPERTY CORNERS AT THE INTERSECTION OF DEL MONTE BOULEVARD, FILED FOR RECORD SEPTEMBER 8, 1989, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, IN VOLUME 16 OF MAPS, "CITIES AND TOWNS", AT PAGE 84, RECORDS OF MONTEREY COUNTY, IN THE RANCHO NOCHE BUENA, CITY OF SEASIDE, COUNTY OF MONTEREY, STATE OF CALIFORNIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

3

Order No. T-150423

COMMENCING AT A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF DEL MONTE AVENUE, SAID POINT OF BEGINNING ALSO BEING THE NORTHWESTERLY CORNER OF "PARCEL A" AND WHICH CORNER IS DENOTED AS A FOUND ONE-INCH IRON PIPE, ALL AS SHOWN ON SAID OFFICIAL MAP; THENCE N. 36° 26' 00" W., 6.48 FEET; THENCE, N. 53° 33' 20" E., 62.43 FEET; THENCE TANGENTIALLY, ALONG CURVE TO THE RIGHT, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 850.00 FEET, THROUGH A CENTRAL ANGLE OF 13° 26' 53" A DISTANCE OF 199.51 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE FROM SAID TRUE POINT OF BEGINNING

(1) ALONG A CURVE TO THE RIGHT, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 850.00 FEET, THROUGH A CENTRAL ANGLE OF 5° 00' 50", A DISTANCE OF 74.38 FEET (LONG CHORD BEARS N. 69° 30' 38" E., 74.36 FEET); THENCE NON-TANGENTIALLY,

(2) S. 21° 52' 30" E., 4.46 FEET; THENCE

(3) S. 68° 07' 30" W., 70.96 FEET; THENCE

(4) N. 50° 13' 16" W., 7.11 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL IV:

ALL THAT REAL PROPERTY SITUATE IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, PARTICULARLY DESCRIBED AS FOLLOWS:

SITUATE IN RANCHO NOCHE BUENA, MONTEREY COUNTY, CALIFORNIA, BEING A STRIP OF LAND 5 FEET IN WIDTH LYING SOUTHERLY OF, PARALLEL AND CONTIGUOUS TO THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE SOUTHERLY BOUNDARY OF A ROAD DESIGNATED AS "DEL REY BOULEVARD" (NOW KNOWN AS CANYON DEL REY ROAD) ON THAT CERTAIN MAP ENTITLED "LICENSED SURVEYORS MAP "A" OF A PART OF RANCHO NOCHE, MONTEREY COUNTY, CALIFORNIA", FILED JULY 19, 1932 IN VOLUME 3 OF SURVEYS AT PAGE 142, RECORDS OF MONTEREY COUNTY, CALIFORNIA, FROM WHICH "CORNER NO. 3", AS SAID CORNER IS SHOWN ON THE AFORESAID LICENSED SURVEYORS M, BEARS N. 18° W., 100.00 FEET DISTANT; SAID PLACE OF BEGINNING ALSO BEING THE SOUTHEASTERLY CORNER OF THAT CERTAIN 0.5005 OF AN ACRE PARCEL OF LAND CONVEYED BY METZ INVESTMENT CORPORATION TO MONTEREY COUNTY, CALIFORNIA, BY DEED DATED MAY 16, 1938 AND RECORDED IN VOLUME 577, OFFICIAL RECORDS AT PAGE 200, RECORDS OF MONTEREY COUNTY, CALIFORNIA; THENCE LEAVING THE BOUNDARY OF "DEL REY BOULEVARD" (NOW DESIGNATED AS CANYON DEL REY ROAD) AND FOLLOWING THE SOUTHERLY BOUNDARY OF SAID 0.5005 OF AN ACRE PARCEL OF LAND AND A PROLONGATION OF SAID SOUTHERLY BOUNDARY S. 71° 42' W., TO THE OPEN WATERS OF LAGUNA GRANDE.

TABLE I  
SOIL ANALYTICAL RESULTS  
PSI ENVIRONMENTAL SITE ASSESSMENT  
REPORT DATE: MAY 1990

REEL 3466 PAGE 922

SAMPLE POINT	TOTAL LEAD (ppm)	SOLUBLE LEAD (ppm)	BENZENE (ppm)	TOLUENE (ppm)	ETHYLBENZENE (ppm)	XYLENES (ppm)	TPH AS GASOLINE (ppm)	DIESEL (ppm)
AB-1	27.5	NT <sup>b</sup>	ND <sup>c</sup>	ND	ND	ND	ND	ND
AB-2	4.1	NT	ND	ND	ND	ND	ND	ND
AB-3	4.1	NT	ND	ND	ND	ND	ND	ND
AB-4	35.5	NT	ND	ND	ND	ND	ND	ND
AB-5	7.1	NT	ND	ND	ND	ND	ND	ND
AB-6	11.2	NT	ND	ND	ND	ND	ND	ND
AB-7	4.1	NT	ND	ND	ND	ND	ND	ND
AB-8	22.3	NT	ND	ND	ND	ND	ND	ND
AB-9	ND	NT	ND	ND	ND	ND	ND	ND
AB-10	292	NT	ND	ND	ND	ND	ND	ND
T1	336	15	NT	NT	NT	NT	ND	ND
T2	159	68	ND	0.22	ND	0.33	ND	ND
T3	17.5	0.5	ND	ND	ND	ND	ND	ND
T4	766	21	ND	ND	ND	ND	ND	ND
T5	8.5	1.4	ND	ND	ND	ND	ND	ND
T6	102	20	ND	ND	ND	ND	ND	ND
T7	ND	NT	ND	ND	ND	ND	ND	ND
T8	34.2	4.9	NT	NT	NT	NT	ND	ND
T9	318	4.9	ND	ND	ND	ND	ND	ND
T10	77.3	5.3	ND	ND	ND	ND	ND	ND
T11	19.2	1.3	ND	0.13	ND	ND	ND	ND
T12	21.2	3	NT	NT	NT	NT	ND	ND
P1	153	22	ND	0.45	ND	0.54	ND	ND
P2	1736	47	ND	0.35	ND	0.48	ND	ND
P3	817	35	ND	0.11	ND	0.25	ND	ND
MW-1	ND	NT	ND	ND	ND	ND	ND	ND
MW-2	ND	NT	ND	0.05	ND	ND	ND	ND
MW-3	42.3	NT	ND	ND	ND	ND	ND	ND
MW-5	2.7	NT	ND	ND	ND	ND	ND	ND
PRG- Ind. <sup>d</sup>	1000	NA <sup>e</sup>	1.4	880	230	320	NA	NA

NOTES:

- Concentrations expressed in parts per million (ppm).
- NT = Not Tested.
- ND = Not Detected.
- PRG = Preliminary Remedial Goals for Industrial Soil (ppm); August 1, 1996.
- NA = Not Available.

TABLE 1  
SOIL ANALYTICAL RESULTS  
PSI ENVIRONMENTAL SITE ASSESSMENT  
REPORT DATE: MAY 1990  
(CONTINUED)

REEL 3466 PAGE 923

SAMPLING POINT	WATER OIL (ppm)	PCBS (ppm)	ACETONE (ppm)	TOTAL CADMIUM (ppm)	SOLUBLE CADMIUM (ppm)	TOTAL CHROMIUM (ppm)	SOLUBLE CHROMIUM (ppm)	ZINC (ppm)
AB-1	ND	NT	NT	NT	NT	NT	NT	NT
AB-2	ND	NT	NT	NT	NT	NT	NT	NT
AB-3	78	NT	NT	NT	NT	NT	NT	NT
AB-4	110	NT	NT	NT	NT	NT	NT	NT
AB-5	ND	NT	NT	NT	NT	NT	NT	NT
AB-6	30	NT	NT	NT	NT	NT	NT	NT
AB-7	76	NT	NT	NT	NT	NT	NT	NT
AB-8	ND	NT	NT	NT	NT	NT	NT	NT
AB-9	32	NT	NT	NT	NT	NT	NT	NT
AB-10	440	NT	NT	NT	NT	NT	NT	NT
T1	43	ND	0.03	1.77	18.3	731	ND	29
T2	330	ND	NT	NT	NT	NT	NT	NT
T3	ND	ND	NT	NT	NT	NT	NT	NT
T4	170	ND	NT	NT	NT	NT	NT	NT
T5	95	ND	NT	NT	NT	NT	NT	NT
T6	250	ND	NT	NT	NT	NT	NT	NT
T7	110	ND	NT	NT	NT	NT	NT	NT
T8	55	0.58	ND	ND	3.2	28.8	NT	NT
T9	190	ND	NT	NT	NT	NT	NT	NT
T10	98	ND	NT	NT	NT	NT	NT	NT
T11	18	ND	NT	NT	NT	NT	NT	NT
T12	89	ND	ND	ND	4.2	59	NT	NT
P1	57	ND	NT	NT	NT	NT	NT	NT
P2	810	0.45	NT	NT	NT	NT	NT	NT
P3	270	ND	NT	NT	NT	NT	NT	NT
MW-1	ND	NT	NT	NT	NT	NT	NT	NT
MW-2	ND	NT	NT	NT	NT	NT	NT	NT
MW-3	ND	NT	NT	NT	NT	NT	NT	NT
MW-5	ND	NT	NT	NT	NT	NT	NT	NT
PRG - Ind.	NA	0.34	8800	850	NA	450	NA	100,000

NOTES:

- Concentrations expressed in parts per million (ppm).
- NT = Not Tested.
- ND = Not Detected.
- PRG = Preliminary Remedial Goals for Industrial Soil (ppm); August 1, 1996.
- NA = Not Available.

TABLE 2  
SOIL ANALYTICAL RESULTS  
HLA SITE ASSESSMENT  
REPORT DATE: JULY 24, 1990

REEL 3466 PAGE 924

SAMPLE NO.	TOTAL LEAD (ppm)	SOLUBLE LEAD (ppm)	PHAS- GASOLINE (ppm)	OIL & GREASE (ppm)
HLA-11	6.5	2.4	ND <sup>a</sup>	ND
HLA-12	58.3	12.8	ND	220
HLA-13	22.2	17.2	ND	ND
HLA-14	4.7	0.15	ND	ND
HLA-15	20.4	1.5	ND	110
HLA-16	1.3	ND	ND	140
HLA-17	120	1.4	ND	580
HLA-18	172	ND	ND	350
HLA-19.1	11.9	ND	ND	190
HLA-19.2	19.2	1.1	ND	1200
HLA-19.3	1130	ND	ND	410
HLA-20	432	0.21	ND	1100
PRG - Ind. <sup>c</sup>	1000	NA <sup>d</sup>	NA	NA

NOTES:

- Concentrations expressed in parts per million (ppm).
- ND = Not Detected.
- PRG = Preliminary Remedial Goals for Industrial Soil (ppm); August 1, 1995
- NA = Not Available.



A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE APPROVING (1) AN EASEMENT AGREEMENT WITH RESPECT TO THE EMBASSY SUITES HOTEL, (2) A DEED RESTRICTION ON THE EMBASSY SUITES HOTEL SITE FOR THE BENEFIT OF THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL, AND (3) A REFINANCING OF A LOAN FOR THE EMBASSY SUITES HOTEL

WHEREAS:

A. Pursuant to a ground lease dated as of September 8, 1989, as later amended (the "Ground Lease"), the Redevelopment Agency of the City of Seaside (the "Agency") has leased to John Q. Hammons Hotel Two, L.P. ("Hammons") certain land in the Laguna Grande Redevelopment Project Area (the "Hotel Site") upon which Hammons has constructed a hotel and related improvements, including parking (the "Hotel Improvements").

B. A minor portion of the Hotel Improvements (consisting of parking lot curbs, irrigation system, landscaping, and a storm drain manhole) were inadvertently placed on a portion of adjacent property owned by the City of Seaside (the "City Parcel").

C. The City of Seaside (the "City"), the Agency, and Hammons desire to enter into a Grant of Easement and Agreement (the "Easement Agreement") whereby, to facilitate efficient ongoing operation and maintenance of the Hotel Improvements, the City grants to the Agency and Hammons a limited easement to use the City Parcel for the placement and maintenance of the Hotel Improvements described in Recital B. A copy of the proposed form of Easement Agreement is on file with the Agency Secretary.

D. The City and the Agency are authorized pursuant to Health and Safety Code Sections 33230(a) and 33391(a), respectively, to enter into the Easement Agreement for purposes of conveyance of the specified easement.

E. Pursuant to Section 5.07 of the disposition and development agreement between the Agency and Hammons related to the Ground Lease, the Agency has negotiated a Covenant to Restrict Use of Property (the "Deed Restriction") with the California Department of Toxic Substances Control ("DTSC") in fulfillment of a condition of the "no action" letter for the Hotel Site received from DTSC. Through the "no action" letter, DTSC has recommended that no further hazardous materials remediation actions are required on the Hotel Site. To perfect the DTSC "no action" letter, the Agency now desires to execute

and record the Deed Restriction against the Hotel Site, substantially in the form on file with the Agency Secretary.

F. Pursuant to Health and Safety Code Section 33459.1 et seq., the Agency is authorized to take such actions as it deems necessary consistent with DTSC orders to implement the remediation of hazardous materials in the Laguna Grande Project Area, including execution and recordation of the Deed Restriction.

G. Hammons desires to obtain a loan in the principal amount of approximately \$23,000,000 from PNC Bank, Ohio, National Association (the "Loan") for permanent refinancing of the Hotel Improvements. The Loan is proposed to be secured, in part, by an encumbrance of Hammon's leasehold interest under the Ground Lease and Hammon's interest in the Hotel Improvements (the "Encumbrance"). The proposed Encumbrance does not encumber the Agency's fee interest in the Hotel Site.

H. Hammons has requested Agency approval of the Encumbrance in accordance with Section 800 et seq. of the Ground Lease. Agency staff and legal counsel have reviewed the proposed Loan and Encumbrance and have found them to meet the requirements for Agency approval set forth in the Ground Lease.

NOW, THEREFORE, the Agency finds and resolves as follows:

1. Each of the recitals set forth above is accurate.
2. The Easement Agreement is approved in substantially the form currently before the Agency and on file with the Agency Secretary.
3. The Agency Chairman or the Executive Director, acting alone, is authorized to sign, on behalf of the Agency, the form of the Easement Agreement currently before the Agency and on file with the Agency Secretary, with such immaterial changes as may be approved by the Chairman or the Executive Director, as applicable.
4. This Resolution constitutes the consent of the Agency, for purposes of Government Code Section 27281, to accept the specified easement and record the Easement Agreement.
5. The Deed Restriction is approved in substantially the form currently before the Agency and on file with the Agency Secretary.
6. The Chairman or Executive Director, acting alone, is authorized to sign, on behalf of the Agency, the form of Deed


Restriction currently before the Agency and on file with the Agency Secretary, with such immaterial changes as may be approved by the Chairman or Executive Director, as applicable.

7. The Loan and the Encumbrance are approved in accordance with the provisions of Section 800 et seq. of the Ground Lease, with the understanding that the Encumbrance does not encumber the Agency's fee interest in the Hotel Site.

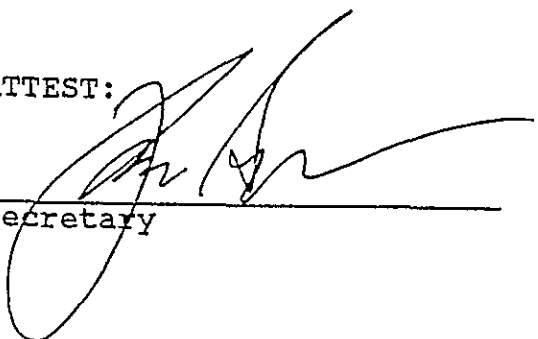
8. The Agency Chairman or Executive Director, acting alone, is authorized to sign, on behalf of the Agency, such documentation as is reasonably required, consistent with the Ground Lease, to evidence the Agency's approval of the Loan and the Encumbrance.

PASSED AND ADOPTED at a special meeting of the Redevelopment Agency of the City of Seaside, State of California, on the 12th day of December, 1996.

AYES: COUNCIL MEMBERS: AMOS, MANCINI, RUCKER, JORDAN  
NOES: COUNCIL MEMBERS: NONE  
ABSENT: COUNCIL MEMBER: NONE  
ABSTAIN: COUNCIL MEMBER: CHOATES

  
Don Jordan, Chairman

ATTEST:

  
Secretary

END OF DOCUMENT